

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

Richard Marshall,

Plaintiff,

vs.

Chris West; Lashun Hutson,

Defendants.

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2:06-701-ID

DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT

COMES NOW Defendant, Lashun Hutson, by and through counsel, and states the following as his answer to Plaintiff’s complaint:

1. This Defendant admits to jurisdiction and the supplementary jurisdiction of this Court. Defendant denies any and all liability and the allegations of wrongdoing in Paragraph One.
2. This Defendant denies that Plaintiff’s rights were violated. Defendant admits that the allegations involve an area encompassed by the United States District Court for the Middle District of Alabama, Northern Division.
3. Admit.
4. Denied.
5. Denied.
6. Denied.
7. Paragraph Seven does not require an answer from the Defendant.
8. Denied.
9. Denied.
10. Denied.

11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.

- 34. Denied.
- 35. Denied.
- 36. Denied.
- 37. Denied.
- 38. Denied.
- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Paragraph Forty-Two does not require an answer from this Defendant.
- 43. The Defendant denies count one of Plaintiff's complaint and demands strict proof thereof.
- 44. The Defendant denies count two of Plaintiff's complaint and demands strict proof thereof.
- 45. The Defendant denies count three of Plaintiff's complaint and demands strict proof thereof.

AFFIRMATIVE DEFENSES

- 1. The Defendant affirmatively pleads that Plaintiff's complaint fails to state a claim upon which relief can be granted as to Lashun Hutson.
- 2. The Defendant affirmatively pleads that Plaintiff failed to comply with statutory requirements to maintain this lawsuit.
- 3. The Defendant affirmatively pleads that his actions were based on probable cause.
- 4. The Defendant affirmatively pleads the de minimus force doctrine.
- 5. The Defendant affirmatively pleads qualified immunity.
- 6. The Defendant affirmatively pleads discretionary function immunity.
- 7. The Defendant affirmatively pleads immunity provided by Alabama Code §6-1-334.
- 8. The Defendant affirmatively pleads immunity as discussed in *ex parte Cranman*.

9. The Defendant affirmatively pleads the general issue.
10. The Defendant affirmatively pleads that Plaintiff's own actions caused or contributed to his alleged injuries.
11. The Defendant affirmatively pleads that damages awarded in this case are limited by statute.
12. The Defendant affirmatively pleads his actions are the same as a reasonable officer.
13. The Defendant affirmatively pleads substantive immunity.
14. The Defendant affirmatively pleads that any search or seizure of Plaintiff was not unreasonable.
15. The Defendant affirmatively pleads that Plaintiff's response prompted Defendants' reaction.
16. The Defendant affirmatively pleads probable cause and arguable probable cause.
17. The Defendant affirmatively pleads that Plaintiff was not assaulted or battered by this Defendant.
18. The Defendant affirmatively pleads that this Defendant did not convert Plaintiff's property.
19. The Defendant affirmatively pleads that he had a legal obligation and responsibility to touch Plaintiff and the touching was not unlawful or done in a harassing manner.
20. The Defendant affirmatively pleads that any charges against Plaintiff were initiated with probable cause.

s/ Rick A. Howard
ALEX L. HOLTSFORD, JR. (HOL048)
RICK A. HOWARD (HOW045)
APRIL W. MCKAY (WIL304)
Attorneys for Defendant Lashun Hutson

OF COUNSEL:
Nix Holtsford Gilliland, Higgins & Hitson, P.C.
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Montgomery, AL 36103-4128
(334) 215-8585

CERTIFICATE OF SERVICE

I hereby certify that I have this day sent by electronic means through the Court's electronic filing system, an exact copy of the foregoing document to:

Jay Lewis
P.O. Box 5059
Montgomery, AL 36103

C. Richard Hill
WEBB & ELEY
P.O. Box 240909
Montgomery, AL 36124

This the 20th day of November, 2007.

s/ Rick A. Howard
OF COUNSEL